

BEFORE THE
ILLINOIS COMMERCE COMMISSION

IN THE MATTER OF:

STATE OF ILLINOIS, DEPARTMENT
OF TRANSPORTATION,

Petitioner,

V

BNSF RAILWAY COMPANY,

Respondent .

No. T10-0027

Petition for an Order requiring the BNSF Railway Company to either replace the grade separation structure carrying IL Route 81 (FAP 611) near Lynn Center in Henry County, Structure Number 037-0126, DOT/AAR No. 065 636R or require the Railroad to reimburse the Department for the replacement of the grade separation structure carrying Illinois Route 81 near Lynn Center in Henry County, Illinois.

Chicago, Illinois

May 15, 2012

Met pursuant to notice at 2:30 p.m.

BEFORE :

MS. LATRICE KIRKLAND-MONTAQUE,
Administrative Law Judge.

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1 APPEARANCES:

2 MS. AMANDA J. RIPP
3 Three First National Plaza
4 70 West Madison Street, Suite 4300
5 Chicago, Illinois 60602
6 appeared for Petitioner;

7 DALEY MOHAN GROBLE, PC, by
8 MR. ROBERT J. PRENDERGAST
9 55 West Monroe Street, Suite 1600
10 Chicago, Illinois 60603
11 appeared for Respondent;

12 MR. JOHN R. SALADINO
13 527 East Capitol Avenue
14 Springfield, Illinois 62701
15 appeared for Staff,
16 telephonically.

17 SULLIVAN REPORTING COMPANY, by
18 Teresann B. Giorgi, CSR

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I N D E X

<u>Witnesses:</u>	<u>Dir.</u>	<u>Crx.</u>	<u>Re-</u> <u>dir.</u>	<u>Re-</u> <u>crx.</u>	<u>By</u> <u>Examiner</u>
NONE					

E X H I B I T S

<u>APPLICANT'S</u>	<u>FOR IDENTIFICATION</u>	<u>IN EVIDENCE</u>
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1 JUDGE KIRKLAND-MONTAQUE: By the power vested in
2 me by the State of Illinois and the Illinois
3 Commerce Commission, I now call Docket T10-0027.
4 And this is the matter of the State of Illinois,
5 Department of Transportation versus the BNSF Railway
6 Company.

7 Appearances, and you can just state
8 your name, for IDOT?

9 MS. RIPP: Amanda Ripp, R-i-p-p.

10 JUDGE KIRKLAND-MONTAQUE: Okay. BNSF?

11 MR. PRENDERGAST: Bob Prendergast,
12 P-r-e-n-d-e-r-g-a-s-t.

13 JUDGE KIRKLAND-MONTAQUE: Okay. Ms. Ripp, you
14 were indicating that you needed another date.

15 MS. RIPP: Yes, Judge.

16 And just so the Court is aware of
17 what's happened, the last several months we've been
18 working towards a settlement agreement that had one
19 set of facts, one set of circumstances. Last week
20 during a conversation with Counsel we have sort of
21 flipped the set of facts.

22 So initially we were going to ask the

1 Railroad to reconstruct the replacement bridge.
2 IDOT, because they want to get the project moving
3 fast, has agreed to actually undertake that work
4 themselves and then get reimbursement from the
5 Railroad.

6 And so we've just proposed that to the
7 Railroad. I believe they're agreeable to that,
8 proceeding in that manner and we're just trying to
9 get now a settlement agreement that now sort of
10 flips the reconstruction out of IDOT.

11 So I've been working with my client to
12 get a redraft of a settlement agreement to Counsel
13 and we hope to have it to him today. I've been
14 advised by my client they would very much like to
15 fast-track this and so they only want one week to
16 come back and to enter the settlement.

17 JUDGE KIRKLAND-MONTAQUE: Okay.

18 (Short pause.)

19 JUDGE KIRKLAND-MONTAQUE: Sorry, John, we
20 started. Ms. Ripp was giving us an update about
21 needing a new date.

22 Why don't you just give your name for

1 the record.

2 MR. SALADINO: John Saladino with the Railroad
3 Safety Section in Springfield.

4 JUDGE KIRKLAND-MONTAQUE: Okay. Thank you.

5 Ms. Ripp, was just explaining why
6 they're requesting a new date.

7 I'm sorry. Ms. Ripp, go ahead.

8 MS. RIPP: So, John, I think I mentioned a
9 little bit to you. So we've been working towards,
10 once, a settlement agreement, essentially where the
11 Railroad would be doing the replacement construction
12 work and having that overseen by IDOT.

13 Last week during a conversation with
14 Counsel, we've sort of flipped that and now IDOT
15 would actually like to undertake the construction
16 work and get reimbursed by the Railroad.

17 And so now we're revising the
18 settlement agreement to effectuate that agreement
19 and we're working towards getting an agreement to
20 Counsel today that would represent that agreement.
21 And so that's part of the reason why we need some
22 more time.

1 And IDOT is very concerned about the
2 condition of the bridge and so would like to
3 fast-track this and would like to have the
4 settlement agreement entered next week. And so
5 we're hoping to work towards that goal and come back
6 next week.

7 JUDGE KIRKLAND-MONTAQUE: All right.

8 MR. PRENDERGAST: Your Honor, I had told Amanda
9 that I'm going to be pretty much out of the box for
10 the next week. I'm going to be out of town Thursday
11 and Friday, be gone for the weekend. And then
12 Monday through Wednesday I'm going to be in
13 Fort Worth, Texas. And so I may be able to manage
14 it to a certain extent and I don't know exactly when
15 we're going to see the revisions or what the
16 revisions will be. We're working toward agreement.
17 I don't expect them to be dastardly or anything like
18 that, but until we know what's on paper and then
19 there's a couple of people I need to run them by and
20 it may not be a week. I can shoot for that and have
21 somebody else fill in for me next Tuesday. But, you
22 know, realistically, I think later in the week would

1 be better.

2 JUDGE KIRKLAND-MONTAQUE: Okay. I think to make
3 our time here more meaningful that we should go past
4 a week, I mean, just based on your schedule. And,
5 obviously, we're concerned, we want to get things
6 moving if it's a safety issue. But just in terms of
7 things actually getting done, I think we probably
8 need more than a week. Just so that we can come
9 back here and say, We're that close to being there.

10 So why don't we go the week of
11 June 4th.

12 MS. RIPP: I would have to call my client to see
13 if I can do that. If one week -- I have very clear
14 marching orders that it should be a week. If it
15 can't be a week, then maybe a couple of days after
16 the 22nd, still though the same week. And if it is
17 something that we're this close to getting it done,
18 then certainly I can come and represent that. I
19 know that -- I don't think that the terms are going
20 to be significantly different that what we've been
21 working towards.

22 JUDGE KIRKLAND-MONTAQUE: I'm just trying to be

1 realistic. I understand you all are doing all the
2 work, but if it gets done, it gets done. I don't
3 see how a couple days further out is going to
4 inhibit that in anyway, if that's your goal.

5 So if you need to -- why don't we look
6 at May 30th, the week of May 28th.

7 The 30th, is that okay?

8 MS. RIPP: Uh --

9 JUDGE KIRKLAND-MONTAQUE: You need to make a
10 call?

11 MS. RIPP: I would need to make a call to my
12 client.

13 JUDGE KIRKLAND-MONTAQUE: Okay. Let me check
14 the availability of this room.

15 (Short pause.)

16 MR. PRENDERGAST: The 30th?

17 JUDGE KIRKLAND-MONTAQUE: Yes. Is 1:30 okay?
18 Later? Earlier?

19 MS. RIPP: Can we do it -- I have a deposition
20 at 10:00. And if we can do 2:30 again, if that's
21 okay?

22 MR. PRENDERGAST: That's fine with me.

1 JUDGE KIRKLAND-MONTAQUE: That works. That's
2 fine with me.

3 Fine with you, John?

4 MR. SALADINO: Yeah, 2:30 on the 30th.

5 JUDGE KIRKLAND-MONTAQUE: Okay. This matter
6 will be continued to Wednesday, May 30th, at
7 2:30 in the afternoon. And we will reconvene at
8 that time.

9 If there's any -- you know, if you can
10 make a filing before if things have been resolved,
11 you know, please do so.

12 Thank you.

13 (Whereupon, the above-entitled
14 matter was continued to
15 May 30th, 2012 at 2:30 p.m.)

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